

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

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|-----------------------|---|--------------------|
| REUBEN FUENTES |) | |
| Claimant |) | |
| VS. |) | |
| |) | |
| IBP, INC. |) | Docket No. 205,724 |
| Respondent |) | |
| Self-Insured |) | |

ORDER

Both claimant and respondent appealed the Award dated November 21, 1997, entered by Assistant Director Brad E. Avery. The Appeals Board heard oral argument on May 27, 1998. The Director appointed Jeff K. Cooper Appeals Board Member Pro Tem to serve in place of Gary Korte who recused himself from this proceeding.

APPEARANCES

Stanley R. Ausemus of Emporia, Kansas, appeared by the claimant. Gregory D. Worth of Lenexa, Kansas, appeared for the respondent.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award. At oral argument before the Appeals Board, the parties agreed the record also includes the July 15, 1996 letter or medical report of Anthony G. A. Pollock, M.D.

ISSUES

The Assistant Director found claimant had developed reflex sympathetic dystrophy (RSD) as the result of a work-related stab wound to the left hand and ordered the respondent to provide claimant with appropriate medical treatment. Although he found that claimant had not reached maximum medical improvement due to the RSD, the Assistant Director awarded claimant permanent partial disability benefits for a 9 percent loss of use to the left hand. The parties have requested the Appeals Board to review the following issues:

- (1) Is claimant entitled to medical treatment for the reflex sympathetic dystrophy discovered by Pedro A. Murati, M.D.? The claimant contends he developed RSD syndrome as a result of the stab wound. The respondent contends he did not.
- (2) What is the nature and extent of claimant's injury and disability? The claimant contends he has a 27 percent permanent partial functional impairment to the left upper extremity as rated by Dr. Murati. The respondent contends claimant has a 1 percent permanent partial functional impairment to the left hand as determined by Dr. Pollock.

FINDINGS OF FACT

After reviewing the entire record, the Appeals Board finds as follows:

- (1) The parties stipulated that Reuben Fuentes, the claimant, sustained personal injury by accident arising out of and in the course of his employment with the respondent, IBP, inc., on February 8, 1995. On that date, Mr. Fuentes stabbed his left hand and lacerated the extensor tendons of both the ring and middle fingers.
- (2) Board-certified general surgeon Zeferino J. Arroyo, M.D., performed two surgeries on Mr. Fuentes to repair his hand. The doctor last saw Mr. Fuentes on May 19, 1995, and released him to return to work without restrictions. At that time the doctor did not see any signs that Mr. Fuentes had developed RSD. He believes Mr. Fuentes has a 9 percent permanent partial functional impairment to the hand as a result of the February 1995 accident.
- (3) Mr. Fuentes' attorney arranged an evaluation by Dr. Murati who is board certified in physical medicine and rehabilitation. The doctor saw and examined Mr. Fuentes on one occasion in January 1996. The doctor found Mr. Fuentes' left hand had a dusky or mottled appearance, accompanied by decreased skin temperature and a nonfunctional grasp. The doctor diagnosed RSD syndrome. He believes Mr. Fuentes would benefit from additional physical therapy and stellate ganglion blocks. According to Dr. Murati, Mr. Fuentes has not reached maximum medical improvement. The doctor, however, rated Mr. Fuentes as having a 27 percent permanent partial functional impairment to the left upper extremity should he decline the recommended medical treatment.
- (4) In July 1996, orthopedic surgeon Dr. Pollock examined claimant at the request of Administrative Law Judge Jon L. Frobish. Dr. Pollock writes in his report dated July 15, 1996, that Mr. Fuentes was exaggerating his symptoms and was either malingering or had major symptom magnification. The doctor concluded that Mr. Fuentes' symptoms were entirely inconsistent with his lacerated tendons, which the doctor believed had healed:

It appears to me that this man is grossly exaggerating his symptoms. It is my impression that he is either grossly malingering or has major symptom magnification. His symptoms are entirely inconsistent with his lacerated tendons which, in my opinion, have completely healed.

If he has any impairment of function, it would have to be 1% to the hand as a result of his discomfort. He has absolutely no other impairment of function. He has absolutely no restriction. He is perfectly capable of returning to his regular job.

Unfortunately, Dr. Pollock's letter does not directly address the question of whether Mr. Fuentes had signs and symptoms consistent with or indicative of RSD. The doctor's deposition was not taken and, unfortunately, we do not know if he even considered such diagnosis.

(5) Because of Dr. Murati's specific findings of skin discoloration and temperature variance in the left hand and because Dr. Pollock did not directly address the question whether Mr. Fuentes had signs and symptoms indicative of RSD, the Appeals Board agrees with the Assistant Director that Mr. Fuentes should receive medical treatment for possible RSD syndrome and that such medical treatment is directly related to the February 1995 stab wound.

(6) Based upon Dr. Murati's testimony, the Appeals Board finds Mr. Fuentes has not reached maximum medical improvement and, therefore, his disability is not permanent in nature.

CONCLUSIONS OF LAW

The order for medical treatment should be affirmed but the award of permanent partial disability benefits should be set aside until such time as Mr. Fuentes' disability has become permanent.

(1) As determined above, Mr. Fuentes has signs and symptoms of RSD syndrome and that such condition is a direct result of the February 1995 stab wound. Therefore, the respondent is required to provide appropriate medical treatment to Mr. Fuentes as ordered by the Assistant Director.

(2) Before a worker is entitled to permanent partial disability benefits under either K.S.A. 44-510d or 44-510e, the "disability" must be "permanent in quality." Because Mr. Fuentes has not reached maximum medical improvement his "disability" is not permanent in quality. Thus, it is premature to attempt to rate his permanent functional impairment to determine his ultimate disability. Therefore, the award of permanent partial disability benefits must be set aside until such time as Mr. Fuentes has undergone the appropriate medical treatment or it is otherwise determined that he has reached maximum medical recovery.

At such time as Mr. Fuentes' disability is determined permanent, he may apply for permanent partial disability benefits.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated November 21, 1997, entered by Assistant Director Brad E. Avery should be modified; that the order for medical treatment is affirmed but the award of permanent partial disability benefits is set aside for future determination.

The remaining orders in the Award are adopted by the Appeals Board as its own to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of June 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stanley R. Ausemus, Emporia, KS
Gregory D. Worth, Lenexa, KS
Brad E. Avery, Assistant Director
Philip S. Harness, Director